

TWELFTH ANNUAL REPORT

1978

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

TWELFTH ANNUAL REPORT

1978

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* to further the reform of the law, legal procedures and legal institutions. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., *Chairman*

Honourable GEORGE A. GALE, C.C., Q.C., LL.D.

Honourable RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.


Honourable JAMES C. McRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

TABLE OF CONTENTS

	Page
INTRODUCTION.....	7
THE PROGRAMME: REFERRED MATTERS.....	7
(a) <i>Completed Projects</i>	7
Sale of Goods.....	7
(b) <i>Projects in Process</i>	10
Class Actions.....	10
THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION.....	12
<i>Projects in Process</i>	12
(a) Law of Trusts.....	12
(b) Administration of Estates of Deceased Persons.....	12
(c) The Hague Convention Concerning the International Admini- stration of the Estates of Deceased Persons.....	13
(d) Basic Principles of Land Law.....	13
(e) The Law of Mortgages.....	13
(f) Products Liability.....	13
(g) Enforcement of Judgment Debts.....	14
(h) Declarations of Marital Status.....	15
(i) The Law of Standing.....	15
(j) Powers of Entry.....	16
FUTURE PROGRAMME.....	16
LIAISON WITH OTHER LAW REFORM AGENCIES.....	18
TABLE OF IMPLEMENTATION.....	19
ACKNOWLEDGMENTS.....	19
APPENDIX A.....	21
APPENDIX B.....	27



Digitized by the Internet Archive
in 2011 with funding from
Osgoode Hall Law School and Law Commission of Ontario

<http://www.archive.org/details/annualreport1978onta>



Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twelfth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1978 to March 31, 1979.

INTRODUCTION

This Report deals with the activities of the Commission during the period April 1st, 1978 to March 31st, 1979. During this year, the Commission has been very heavily engaged in the area of Commercial Law.

We are pleased to record that we completed our Report on Sale of Goods. This Project has been a most complex and taxing one for the Commission; indeed, it has proved to be the most difficult experience that the Commission has yet encountered. It has been a Project that has made great demands upon the Commission, and it has consumed much of the Commission's time and energy. We have, nevertheless, been able to conclude research on our Project on Products Liability, and we anticipate that our Report will be completed in the Fall of 1979.

The emphasis that the Commission has placed upon completing the Projects on the Sale of Goods and Products Liability has necessarily meant that some other projects have had to be deferred. We have, however, continued to make considerable progress in our Projects on the Law of Trusts, the Enforcement of Judgment Debts, and the Administration of Estates of Deceased Persons. So too, we have continued work on our Projects on Class Actions and the Law of Standing.

THE PROGRAMME: REFERRED MATTERS

Section 2(1) (d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this Report. Work on one prior Reference, the Sale of Goods Project, was completed during the year and research on the remaining Reference, the Project on Class Actions, was continued.

(a) COMPLETED PROJECTS

Sale of Goods

During the course of the year, the Commission completed its review of the law relating to the sale of goods in Ontario. The Sale of Goods Project was referred to the Commission in February, 1970. At the request of the Government, we gave priority to an examination of warranties and guarantees in the context of consumer sales and, in 1972, published our Report on Consumer Warranties and Guarantees in the Sale of Goods. The Commission's final Report on Sale of Goods, submitted to the Attorney General in March, 1979, is a three volume Report, consisting of two volumes of legal analysis and recommendations for change, and one volume of appendices. The appendices

include the text of a Draft Bill to revise *The Sale of Goods Act*, which the Commission recommends for adoption in Ontario.

The two volumes of legal analysis and recommendations are divided into 19 chapters. The chapter headings are as follows:

- Chapter 1 Origin of Project, Organization and Methodology.
- Chapter 2 Evolution of Modern Sales Law.
- Chapter 3 The Need for a Revised Sale of Goods Act: Its Form and Related Questions.
- Chapter 4 Scope of The Sale of Goods Act and Definition of Sale.
- Chapter 5 Formation, Form and Assignment of Contract.
- Chapter 6 Definition of Express Warranty and Classification of Contractual Obligations.
- Chapter 7 Freedom of Contract and Minimum Behavioural Standards: The Doctrines of Unconscionability and Good Faith in Performance and Enforcement.
- Chapter 8 Course of Dealing and Usage of Trade, and Some Specific Constructional Issues.
- Chapter 9 The Seller's Implied Warranties (Conditions) of Title, Description and Quality and the Effectiveness of Disclaimer Clauses.
- Chapter 10 Express and Implied Warranties and the Doctrine of Privity.
- Chapter 11 Transfer of Title and Its Incidents Between Seller and Buyer.
- Chapter 12 The 'Nemo Dat' Doctrine and Sale Transactions.
- Chapter 13 Documents of Title.
- Chapter 14 Delivery and Payment.
- Chapter 15 Frustration in Contracts of Sale.
- Chapter 16 Seller's Remedies.
- Chapter 17 Buyer's Remedies.
- Chapter 18 Issues Common to Seller's and Buyer's Remedies.
- Chapter 19 Miscellaneous Issues.

The Report contains approximately 251 recommendations, directed towards a root and branch reform of the substantive law of the sale of goods

in Ontario. In formulating our recommendations for change, we have been strongly influenced by Article 2 of the American *Uniform Commercial Code*, and have recommended that Ontario should adopt a revised Sale of Goods Act that borrows heavily from, but is not simply a copy of, Article 2. A number of the more significant recommendations contained in the Report are the following. We recommend the introduction of a statutory duty of good faith in the performance of contracts, and the creation of a broad judicial power to avoid or modify contracts that at the time of their formation were unconscionable. We recommend the abolition of the parol evidence rule with respect to contracts for the sale of goods. The Report also recommends that the revised Sale of Goods Act should contain a general provision empowering the court to apply by analogy any of the provisions of the Act to transactions other than sales transactions, such as a lease of goods or contract for the supply of labour and materials. Detailed rules governing the risk of loss are laid down, which apply independently of the rules governing transfer of title.

We recommend that liability to an ultimate buyer be imposed upon manufacturers or distributors of goods who make representations or promises in any form relating to goods that are the subject of a contract of sale, if the natural tendency of such representations or promises is to induce the buyer to rely thereon and if the buyer acts in reliance upon the representation or promise. The requirement that an injured party must have relied upon a representation or promise relating to the goods is abolished, however, if the representation or promise was made to the public and the natural tendency of such representation or promise was to induce buyers generally to rely thereon.

Substantial modifications in the law governing implied warranties are also recommended. The distinction between warranties and conditions is abolished. The implied warranty of merchantability is expanded to require, *inter alia*, that goods shall remain fit or perform satisfactorily for a reasonable period of time, and that, in the case of new goods, spare parts and repair facilities, if relevant, shall be available for a reasonable period of time, unless the circumstances indicate otherwise. We also recommend that express and implied warranties be extended to goods supplied under a contract of work and materials, and that certain of the implied warranties should apply to a contract for the lease of goods.

The Report sets out in detail the remedies available to both buyers and sellers. We recommend abolition of the *a priori* classification of contractual terms as warranties and conditions, and recommend that the availability of remedies for breach of contract should turn, not on whether the term breached is a warranty or condition, but on the gravity of the breach. Broader remedies are made available if a breach is a "substantial" breach; that is, if it is one that the party in breach foresaw or ought reasonably to have foreseen as likely to impair substantially the value of the contract to the other party. The Report

further recommends that a seller be given the right to "cure" a non-conforming tender or delivery amounting to a substantial breach. The buyer is permitted to demand cure of any breach, whether or not it is substantial, and, upon the seller's failure to cure, to treat the breach as a substantial breach. We recommend that a buyer be given the right to revoke acceptance of goods where there is a non-conformity amounting to a substantial breach, provided certain requirements are met. We recommend that a right be given to either party to demand adequate assurances of performance by the other where reasonable grounds for insecurity arise.

Substantial changes are recommended to the law governing anticipatory repudiation, with a view to relieving the aggrieved party from the requirement that he immediately elect between cancellation of the contract and continued performance. The changes include conferring upon the repudiating party a right to retract the repudiation under certain conditions, and imposing a duty of mitigation upon the aggrieved party.

A right of resale in the seller, and a right to "cover" in the buyer are recommended in cases of substantial breach. We recommend that the "available market" standard for the assessment of damages in the existing Sale of Goods Act be eliminated. In the case of a substantial breach at the agreed time of performance, it is recommended that damages be ascertained *prima facie* by the difference between the contract price and the price that could have been obtained by a commercially reasonable disposition or purchase of the goods. We also recommend that the buyer's right to obtain specific performance against the seller be expanded.

The Report contains many other provisions designed to eliminate present or prospective problems relating to the sale of goods. It is our hope that these provisions generally will revise, reform and modernize the law governing the sale of goods, promote fair dealing, and assist the continued expansion of commercial practices through custom, usage and agreement of the parties.

The Commission wishes to express its appreciation to the Project Director, Professor Jacob S. Ziegel of the University of Toronto, for his immeasurable assistance and dedication during the course of the Project. We also wish to thank members of the Research Team. We acknowledge with gratitude the assistance of Mr. L. R. MacTavish, Q.C., former Senior Legislative Counsel, in the preparation of the Draft Bill.

(b) PROJECTS IN PROCESS

Class Actions

In November, 1976, the Attorney General referred the subject of class actions to the Commission, and requested that we investigate the advisability

of the development of class actions in Ontario, with particular reference to the potential impact of an expanded class actions mechanism on the court system.

Class actions are actions whereby numerous persons having the same interest may either sue or be sued. In Ontario, class actions are founded on the Rules of Court. It would appear that, under the present Rules, the circumstances in which such actions may be brought, particularly in the case of a plaintiff suing on behalf of a class, may be somewhat restrictive. The range of class actions permitted in Ontario under the existing Rules was expanded somewhat during the past year by the decisions of the Ontario Court of Appeal in *Naken et al. v. General Motors of Canada Ltd. et al.* (1979), 21 O.R. (2d) 780, (1978), 7 C.P.C. 209 (C.A.). In the earlier decision, Arnup, J.A., with whom Dubin and Blair, J.J.A., agreed, noted that the subject of class actions "raises complicated questions of great difficulty in the areas of the delineation of the class, identity of the causes of action of the class members, discovery and production from plaintiffs, proof of the breach of contract or tort that caused loss to the class, assessment of damages and allocation of proceeds". Arnup, J.A., also drew attention to the existence of the present Reference, and the Commission's intention to review fully these and other matters.

The Commission's investigation will include the following: the costs and benefits of class actions; the protection by means of procedural safeguards of the respective interests of class representatives, absentee class members, the opposing party and the public; the means of assessment and distribution of damages; the awarding of costs in class actions; negotiated settlements of class actions; the role of the lawyer representing the class; professional responsibility; and, alternatives to the class action.

During the past year working papers have been completed and submitted to the Commission that deal with the following topics: namely, the historical origins of class actions; the status of class actions in Ontario under present Rule 75; present alternatives to class actions such as consolidation, joinder and test cases; issues of procedural and substantive law relating to class actions; and, the costs and benefits of class actions, when evaluated in the light of existing empirical evidence. A computer tape containing data relating to all class actions in the U.S. federal courts for the fiscal years 1976, 1977, and 1978 was obtained and analyzed, with a view to obtaining objective information as to the effects of the expanded class action mechanism in force in that jurisdiction. In connection with plaintiff class actions, first drafts were completed by the Commission's research staff of working papers relating to issues of numerosity, typicality, predominance and common issues, superiority, preliminary tests on the merits, adequacy of representation and notice, opting out and opting in, discovery, damages, and *res judicata*. An economic analysis of class actions was commissioned from outside experts, and this paper has now been completed. Work is in progress on papers examining alternative class

action models, defendant class actions, and lawyers' fees and other costs in class actions.

Our work in this area has been impeded by the need to redirect the efforts of those members of our legal research staff who are involved in this Project towards the completion and publication of our Report on Sale of Goods. As a result of this delay, it has not, as yet, been possible for us to reach conclusions as to the merits of an expanded class action mechanism, or to develop detailed suggestions as to possible class action mechanisms that could be usefully referred to our Advisory Committee for this Project. This Committee consists of judges, leading members of the litigation bar, and academic experts in civil procedure, and is constituted under the chairmanship of the Commission's Vice Chairman, the Honourable G. A. Gale.

We intend, however, to give the Class Actions Project a high priority during the coming year. In the light of the substantial body of research that has already been completed, we expect that substantial progress will be made towards the formulation of recommendations with respect to the changes, if any, that should be made to the procedure governing class actions.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding Act, the Commission has power to inquire into and consider any matter relating to reform of the law. Accordingly, the Commission may initiate research on its own motion. During the past year, no new projects have been commenced by the Commission.

PROJECTS IN PROCESS

(a) *Law of Trusts*

The Law of Trusts Project has involved a study of major proportions. During the course of the Project, the law of trusts has been examined in detail. Thirteen research papers have been prepared for, and considered by, the Commission.

During the past year work on the Law of Trusts Project has been largely completed. With the expert assistance of the Project Director, Professor Donovan W. M. Waters of the University of Victoria, the Commission's Report on the Law of Trusts and a revised Trustee Act implementing the Commission's recommendations are now in draft form. The draft Report and legislation will be placed before the Commission for consideration and approval commencing in June, 1979.

(b) *Administration of Estates of Deceased Persons*

Work on our Project on the Administration of Estates of Deceased Persons continues under the direction of Professor George Alexandrowicz

of Queen's University. During the past year six research papers on the following topics have been completed: (1) the office of the personal representative; (2) the conveyance of the real property and the transfer of the personal property of deceased persons; (3) administration of estates of foreign decedents; and, (4) the position of the beneficiary. It is intended to commission research papers on additional topics, including the rights of creditors and Surrogate Court procedure, during the coming year.

The Commission hopes to turn its attention to a consideration of the completed research papers in the autumn of 1979. In order that the Commission may obtain the views of persons having practical experience in estate administration, an Advisory Committee of leading practitioners and other knowledgeable persons has been constituted under the chairmanship of Malcolm S. Archibald, Q.C. Preliminary meetings have been held with members of the Advisory Committee for the purpose of settling the research design. The Commission will continue to seek the views of the Advisory Committee as research proceeds.

(c) *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The Hague Convention Concerning the International Administration of the Estates of Deceased Persons forms part of the Commission's larger Project on the Administration of Estates of Deceased Persons. The Hague Convention, and the question whether this Convention should be given effect in Ontario, are examined in a research paper that deals with the administration of estates of foreign decedents, prepared for the Commission by Professor Marvin Baer of Queen's University. The Commission hopes to be able to commence consideration of this research paper in the autumn of 1979.

(d) *Basic Principles of Land Law*

Because of other commitments, particularly with respect to the Reference from the Attorney General on the Sale of Goods and our Project on Products Liability, it has been necessary to defer work on this important area of the law for the present time. The Commission hopes to be in a position to resume study of the basic principles of land law in the near future.

(e) *The Law of Mortgages*

Work on the law of mortgages has been suspended pending resumption of research on the basic principles of land law. It is hoped, however, that research on the law of mortgages can proceed during the coming year.

(f) *Products Liability*

In March, 1977, the Commission decided to undertake an examination of the nature and scope of a supplier's liability for defective products to the ultimate user or purchaser of a product and to other persons injured by the product. The Products Liability Project was the result of the Commission's

appreciation of deficiencies and anomalies in the law governing products liability, which became apparent during the course of the Commission's Project on the Sale of Goods. During 1977, work commenced on the Products Liability Project. Professor Stephen M. Waddams of the University of Toronto was appointed Project Director.

This Project has involved a detailed and thorough analysis of the law relating to products liability, including a comparative study of developments in other Canadian jurisdictions and in jurisdictions outside Canada.

During the past year, work on this Project has been very nearly completed. The Commission's Report on the Law of Products Liability is now in the process of being settled in draft form. The draft Report, together with a Draft Bill to implement the Commission's recommendations, will be placed before the Commission for consideration and approval in the near future.

(g) Enforcement of Judgment Debts

For some time now the Commission has been engaged in a detailed study of the substantive law and procedural rules, as well as the actual practice, relating to the enforcement of judgment debts. Our study is a direct response to the vagaries and frustrations which not uncommonly plague post-judgment debt collection and which arise in large measure from the ambiguity, complexity and often antiquated nature of debtor-creditor law. The deficiencies and confusion endemic in this branch of the law frequently serve as a disincentive to invoke available legal rights and, in many instances, even serve to mask the very existence of such rights. Moreover, the unsatisfactory state of debtor-creditor law detrimentally affects the administration of justice by sheriffs, bailiffs and other officials having carriage of enforcement matters.

The present enforcement regime consists in the main of parallel and generally uncoordinated offices responsible, respectively, for the enforcement of judgments of the Supreme Court, the County and District Courts, the Provincial Court (Family Division), the Unified Family Court, and the Small Claims Courts. The existence of these essentially separate structures contrives at the outset to promote a not insignificant degree of inefficiency, waste and, ultimately, cynicism respecting the efficacy of the law. Accordingly, among other possibilities, we have considered the replacement of the present organizational structure with a fully integrated enforcement system, at the centre of which would be a new supervisory office responsible for the enforcement of judgments of all courts in Ontario.

In our attempt to establish a system that balances equitably the rights of creditors and debtors, we have also been examining all methods by which judgments may be enforced. Our consideration of execution against personal

property, garnishment, and discovery respecting the debtor's property (judgment debtor and third party examinations) has now been completed, and research papers on priority among creditors and equitable execution have been written. Work has also commenced on other topics, including fraudulent conveyances and preferences, and pre-judgment seizure. In addition, a commissioned working paper relating to the seizure and sale of real property has been completed and is in the process of being considered by the Commission.

Finally, the Commission has revised its unpublished Interim Report on the Orderly Payment of Debts (July 21, 1976), dealing with the proposed federal extension and composition of debts scheme, in light of the proposed new bankruptcy legislation (Part III of Bill S-14, 4th Session, 30th Parliament). The revision will be included as a separate chapter in our final Report.

In our examination of the law respecting the enforcement of judgment debts, we have been ably assisted by David E. Baird, Q.C.

(h) *Declarations of Marital Status*

The Commission's Project on Declarations of Marital Status is the only topic of the Family Law Project that remains outstanding. The Project deals with the jurisdiction of the court to declare the validity of an existing marriage, or of a foreign divorce or annulment, according to the law of Ontario. Pressure of other work has delayed the completion of this Project.

(i) *The Law of Standing*

An attempt by a private citizen to litigate issues affecting public rights often raises the issue of *locus standi*; that is, status to bring a lawsuit. Generally speaking, the courts have held that the Attorney General, either in his own name or by means of a relator action, is the proper person to institute such lawsuits. Nevertheless, there are exceptions to this proposition. For example, if a private individual can show that he or she has a special interest or can demonstrate that he or she has suffered special damages, that individual will usually be accorded standing to sue.

Recent cases have demonstrated that this area of the law is both complex and problematic, and arguments can be made both in favour of and against the liberalization of the law of standing. Obviously these arguments must be scrutinized very carefully. In addition, the Commission intends to study relevant legislation in other jurisdictions and proposals advanced by other law reform agencies dealing with this topic. The Commission will also attempt to examine, in jurisdictions that have expanded the law with respect to *locus standi*, any relevant statistical data that is available concerning the impact of enlarged standing rules upon the court system. Furthermore, the Commission will consider whether, if recommendations are made to reform the law with

respect to *locus standi*, a general recommendation ought to be made or whether specific recommendations ought to be made with respect to various areas of the law.

The internal staff has completed research on the present state of the law of standing. The Sale of Goods Project, however, particularly during the latter part of the year, has imposed extraordinary demands upon the resources of the Commission. Accordingly, not as much progress on the Project on the Law of Standing has been made as the Commission would have otherwise desired. However, it is expected that the Commission in the coming year will be able once again to turn its attention to this important Project and will be able to make substantial progress towards the completion of its Report.

(j) *Powers of Entry*

During the past year, work was resumed on the long-deferred Project on Powers of Entry. A large number of Ontario statutes give power to enter upon lands, buildings and private dwellings. The purpose of the Project is to examine these statutory powers of entry with reference to the purposes of the statutes under which they are created, in order to determine whether they should continue to exist and, if so, the restrictions and safeguards to which they should be subject.

FUTURE PROGRAMME

It is anticipated that the task of completing the projects now in process will occupy the Commission for the foreseeable future. Nevertheless, we have turned our attention to projects that have been deferred and to new projects for inclusion in our programme. One such Project is the Law of Contract Amendment Project.

The need for a comprehensive review of general contractual principles became increasingly apparent to the Commission during the course of its Project on the Sale of Goods. In our Report on Sale of Goods we recommended that certain changes in the general law of contract, that had a particular bearing on the law of sales, should be incorporated in a revised Sale of Goods Act; for example, we proposed that the parol evidence rule should be abolished in sales transactions, and that the need for consideration to support an agreement made in good faith modifying the terms of an existing contract should likewise be abolished. Other areas of general contract law that required reform, but that had no unique sale of goods dimension, were identified and recommended for consideration as part of a Law of Contract Amendment Project.

With the completion of our Report on Sale of Goods, we have now taken the first steps towards a general and comprehensive review of the law

of contract. Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law of the University of Toronto, have been appointed joint directors of the Contract Law Amendment Project. The objectives of the Project have been defined as follows: (1) to consider the extent to which recommendations made in the Sales Report are suitable for adoption in the wider contractual context; (2) to consider topics identified in the Sales Report as requiring reform; and, (3) to examine additional topics that appear to be in need of review and legislative treatment. A tentative research design has been prepared, and it is proposed that research papers be commissioned on the following, non-exhaustive, list of topics:

1. Reform of the law of consideration, with particular reference to firm offers, modification of contracts (including the rule in *Pinnel's* case), and promissory estoppel.
2. Contracts for the benefit of third parties.
3. Formalities in the formation of contracts (Statute of Frauds requirements), other than those governing contracts for the sale of goods.
4. The doctrine of unconscionability.
5. Good faith in bargaining, including recovery of reliance damages and compensation for benefits conferred on another party.
6. Benefits conferred under ineffective contracts.
7. Mistake and frustration.
8. Penalty and forfeiture clauses.
9. Consequences of illegal contracts.
10. Remedies for innocent and fraudulent misrepresentations.
11. Aspects of the law of damages, including the rule in *Bain v. Fothergill*, the doctrine of anticipatory repudiation and the obligation to mitigate, the recovery of reliance damages, and application of general damage rules to private contracting parties.
12. Contracts by persons under a contractual disability.

A Research Team expert in the law of contract is being formed, and it is anticipated that research on a number of the above mentioned topics will commence in the summer of 1979. The Commission is also considering the establishment of an Advisory Committee, the individual and collective views of which might be sought by members of the Research Team and by the Commission with respect to proposed recommendations.

LIAISON WITH OTHER LAW REFORM AGENCIES

Since the Ontario Law Reform Commission was established in 1964, law reform agencies have been created in many other jurisdictions. We share with these agencies not only the overall objective of law reform, but also individual research projects of common concern. It is, therefore, vital that we should seek to develop and to strengthen our ties with law reform agencies throughout the world. During the past year we have been privileged to receive visitors from these organizations, and have derived much benefit from the opportunity to discuss with them problems of mutual interest.

Our guests, whom we were most pleased to receive, included: Professor A. E. Anton of the Scottish Law Commission; the Honourable Sir John Minogue, Q.C., Law Reform Commissioner for Victoria; Mr. Kevin P. O'Connor, Principal Law Reform Officer, The Law Reform Commission of Australia; Mr. A. R. Godfrey-Smith, Consultant, The Law Reform Commission of Australia; Professor Terry Ross Carney, Faculty of Law, Monash University; and, Miss Rike Luebbe, of the Max-Planck-Institut, Germany.

We were also visited by members of the Trinidad and Tobago Integrity Review Commission. The members we had the good fortune to meet were: Sir Alan Reece, C.M.G., Chairman; the Honourable Mr. Justice Karl de la Bastide; Dr. Stephen Moosai-Maharaj; and, Mr. Leo Seebaran. We were also pleased to meet Mr. Rawlston G. Gonourie, Consul of Trinidad and Tobago.

So too, it was a pleasure to welcome from Japan members of the Institute of Administrative Management, who were on a fact finding tour of the Office of Ombudsman in North America. The members we much enjoyed meeting were: Mr. Teruo Okubo, Staff Officer, Research Division, National Governors Association; Mr. Tetsuo Tsuruoka, Research Fellow, Institute of Administrative Management; and, Professor Yasuo Watanabe of the International Christian University.

Our visitors during this past year also included members and former members of other Canadian Law Reform Agencies: namely, Francis C. Muldoon, Q.C., Chairman, Law Reform Commission of Canada; Mr. J. Douglas Lambert, former Chairman of the Law Reform Commission of British Columbia, and now a member of the British Columbia Court of Appeal; Professor Gordon Bale, Associate Director, The Institute of Law Research and Reform, Alberta; Mr. Iain D. C. Ramsay, Legal Research Officer, The Institute of Law Research and Reform, Alberta; and, Professor Brian A. Grosman, former Chairman of the Law Reform Commission of Saskatchewan. We also derived much pleasure from a visit by the newly appointed Ombudsman for Ontario, the Honourable Donald R. Morand, Q.C.

Mr. Errol Da Costa Chase, First Deputy Chief Parliamentary Counsel of Barbados and Mr. Errol L. Thomas, Parliamentary Counsel, Barbados,

were attached to our Commission during the summer months of 1978. It was good to have these legal officers with us, and we hope that they derived both enjoyment and satisfaction from their experience. We were particularly pleased by a visit to our Commission of the Attorney General for Barbados, the Honourable H. deB. Forde, S.C., M.P.

In August 1978 the Commission was represented by the Chairman and Counsel at a meeting of the Canadian Law Reform Agencies at St. John's, Newfoundland, and, immediately thereafter, by the Chairman at the regular Annual Meeting of the Uniform Law Conference of Canada, in the same city.

During this past year the Commission has taken the opportunity to visit the Law School of the University of Windsor. We were warmly received by the Dean, by members of the Faculty, and by the student body. So too, the Chairman and Counsel were guests of the Muskoka Law Association, and the Chairman spoke of the work of the Commission at the Annual Meeting of the Association of County and District Court Judges of Ontario. We are much obliged to all those whose efforts combined to make our visits both successful and enjoyable.

TABLE OF IMPLEMENTATION

Appendix A to this Report contains a list of the Reports prepared and submitted by the Commission since it was formed in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted.

ACKNOWLEDGMENTS

Attached hereto as Appendix B is a list of the officers and permanent staff of the Commission. We extend a warm welcome to those who have joined our ranks during the past year: Mr. Eric Gertner, LL.B., B.C.L., as a Legal Research Officer; and Mrs. Enza M. Renda, as a member of our administrative staff. To Mrs. Mary Elizabeth Burt Salter, B.A., LL.B., who left our legal research staff, we express our thanks and best wishes.

We wish also to express our heartfelt thanks and appreciation to Miss A. F. Chute, Secretary to the Commission, and to the administrative staff, for their splendid efforts on our behalf during the past year.

To you, Mr. Attorney, and to the officers of the Ministry, we extend our sincere appreciation and thanks for the manner in which we have been sustained and encouraged in our work.

All of which is respectfully submitted.

Derek Mendes De Costa

DEREK MENDES DA COSTA,
Chairman.

George A. Gale

GEORGE A. GALE,
Vice Chairman.

Richard A. Bell

RICHARD A. BELL,
Commissioner.

W. Gibson Gray

W. GIBSON GRAY,
Commissioner.

James C. McRuer

JAMES C. McRUER,
Commissioner.

William R. Poole

WILLIAM R. POOLE,
Commissioner.

March 30, 1979

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Legislation Concerning Commission Proposals
No. 1 The Rule Against Perpetuities	February 1, 1965	<i>The Perpetuities Act</i> , S.O. 1966, c. 113
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	<i>The Wages Amendment Act</i> , S.O. 1968, c. 142
No. 3 Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act</i> , S.O. 1967, c. 72
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
The Evidence Act; Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act</i> , S.O. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act</i> , S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act</i> , S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act</i> , S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act</i> , S.O. 1975, c. 45
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act</i> , S.O. 1967, c. 27
The Law of Condominium	March 6, 1967	<i>The Condominium Act</i> , S.O. 1967, c. 13 See now <i>The Condominium Act</i> , S.O. 1978, c. 84

Title	Date of Report	Legislation Concerning Commission Proposals
Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act</i> , S.O. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act</i> , S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act</i> , S.O. 1978, c. 8, s. 1
The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act</i> , S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended by S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable To Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act</i> (No. 2), S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , S.O. 1975, c. 38 See now <i>The Family Law Reform Act</i> , S.O. 1978, c. 2, s. 60(4) <i>The Trustee Amendment Act</i> , S.O. 1975, c. 39
Annual Report 1968	April 7, 1969	—

Title	Date of Report	Legislation Concerning Commission Proposals
The Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , S.O. 1970, c. 96, s. 23 See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85
Report on Family Law: Part I – Torts	November 4, 1969	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , S.O. 1970, c. 54, s. 1
Report on Family Law: Part II – Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , S.O. 1971, c. 50, s. 55 (partial implementation) See now <i>The Marriage Act</i> , S.O. 1977, c. 42 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , S.O. 1972, c. 98 See <i>The Coroners Amendment Act</i> , S.O. 1978, c. 38
Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act</i> , S.O. 1975 (2nd Session), c. 9
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—
The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act</i> , S.O. 1972, c. 44 See <i>The Change of Name Amendment Act</i> , S.O. 1978, c. 28

Title	Date of Report	Legislation Concerning Commission Proposals
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	<i>The Planning Amendment Act</i> , S.O. 1973, c. 168, s. 10
Powers of Attorney	January 11, 1972	—
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Judicature Amendment Act (No. 2)</i> , S.O. 1977, c. 51, s. 9
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
Report on Family Law: Part III – Children	September 25, 1973	<i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1 (partial implementation) See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85 <i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Children's Law Reform Act</i> , S.O. 1977, c. 41 (partial implementation)
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 6, 1973	—

Title	Date of Report	Legislation Concerning Commission Proposals
Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act</i> , S.O. 1975, c. 30 (partial implementation) See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Small Claims Courts Amendment Act</i> , S.O. 1977, c. 52 (partial implementation)
Report on Family Law: Part IV – Family Property Law	February 8, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation) See <i>The Land Titles Amendment Act</i> , S.O. 1978, c. 7 <i>The Registry Amendment Act</i> , S.O. 1978, c. 8
Report on Family Law: Part V – Family Courts	February 8, 1974	See <i>The Unified Family Court Act</i> , S.O. 1976, c. 85 <i>The Unified Family Court Amendment Act</i> , S.O. 1978, c. 68 <i>The Children's Probation Act</i> , S.O. 1978, c. 41 (partial implementation)
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 42
Annual Report 1974	March 31, 1975	—
Report on Family Law: Part VI – Support Obligations	April 18, 1975	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act</i> , S.O. 1978, c. 2

Title	Date of Report	Legislation Concerning Commission Proposals
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	—
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—
Annual Report 1975	March 31, 1976	—
Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
Report on The Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 17 (2)
Annual Report 1976	March 31, 1977	—
Annual Report 1977	March 31, 1978	—
Sale of Goods	March 30, 1979	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D.
Vice Chairman	Honourable George A. Gale, C.C., Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. Honourable James C. McRuer, O.C. LL.D., D.C.L. William R. Poole, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. Jennifer K. Bankier, B.A., LL.B. William A. Bogart, B.A., LL.B. Eric Gertner, LL.B., B.C.L.
Administrative Assistant	Mrs. Roslynne F. Mains, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Ms. Grace C. Novakowski, B.A. Mrs. E. M. Renda
Receptionist	Miss J. A. M. O'Loughlin

